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File No. O. Court Fees/57

Legal **DEPARTMENT**

A **BRANCH**

K

Subject:— P 17 E

Opinions under the

Court Fees Act, 1870

File No. O. Court Fees/57

Std. Sectt. Slip 24 B e.

223-A

C O N T E N T S.

Legal Department File No. C. Court Fees/ 51.

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4)	No.9057 5.5.1951.	G.C.R.D.No.9071/49,dt.28.4.51 Re: Court Fee Baroda Agricultural Debtors Relief Act. Refund of - ---paid under-	9 - 10
5)	8193 24.5.51	Sec.19%(4) - Question whether sec.19% E(4) would not apply, if the petitioner agrees to pay the additional Administration Duty, thus indirectly accepting the undervaluation pointed-out by the Collector but after paying a part of the additional duty, defaults to make the balance of the additional duty, and the balance will not be recoverable under sec.19-J(1) of the Act.	11 - 14.
6)	No.13488 28.6.51	G.R.,R.D.No.824/49,dt.21.6.51 Re : Writing off - Estate of Hidayatbai (deceased) W/O Ebrahim Abdulla - balance of probate duty for valuation of -	15 - 22
7)	20111 17.12.51	Question whether any court-fee is payable on the objection petitions filed under sec.19(1) of the Bombay prevention of fragmentation and consolidation of Holdings Act, 1947.	23- 26.

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Office of the R.L.A.

Refund of Court Fees on withdrawal of suit from the City Civil Court

Effect of Supreme Court decision on -

The first question may soon be decided by the High Court; and the R.L.A. does not, therefore, think it necessary to express an opinion on that question.

On the second question it would be unnecessary for Government to take into consideration subsequent changes brought about by reversal of the High Court Judgment. The City Civil Court allowed withdrawal of the suit in the light of the law as it then stood and recommended refund. It is open to Government to order refund as the suit was bona fide withdrawn by the Plaintiffs in accordance with the law as it then obtained.

Sd/- P.N.LAD,
23/1.

Remembrancer of Legal Affairs.

U.R. to N.D. No. 1528, dated the 24th January 1951.

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Office of the R.L.A.

Court-fees Act, 1870, section 25,26 and 27 whether court-fee stamps issued by the State Government only can be recognised.

The question for the consideration of the R.L.A. is whether it would be legally feasible to frame a rule under the Court-fees Act, 1870, that court-fee required to be paid in this State shall be in the shape of court-fee stamps issued by the Government of Bombay.

2. In this connection attention is invited to rule 3(1) (i) of the Bombay Stamp Rules, 1939, made by the Government of Bombay under the Indian Stamp Act, 1899, which makes similar provision in respect of revenue stamps. Under that sub-rule all duties with which any instrument is chargeable are required to be paid, and such payment is required to be indicated on such instruments, by means of stamps issued by the State Government for the purposes of the ACt. Thus under that rule whenever any stamp duty is required to be paid, stamps purchased in other States cannot be used. The object in view can be achieved by making a similar rule in respect of court-fees. Section 25 of the Court-fees Act, 1870, provides that all fees referred to in section 3 or chargeable under that Act shall be collected by stamps. Section 26 provides that stamps used to denote any fees chargeable under the Act shall be impressed or adhesive as the Appropriate Government may direct. Appropriate Government means in relation to fees or stamps relating to documents presented or to be presented before any officer serving under the Central Government that Government and in relation to any other fees or stamps the State Government. Section 27 empowers the State Government to make rules for regulating inter alia the supply of stamps to be used under the Act. Since it is the State Government that can exercise control

Over the use of stamps these would appear no objection to making a rule that only stamps issued by the Government of Bombay shall be used. The making of a rule as proposed by the R.D. appears to be feasible.

Sd/- P.N.LAD,
25/1

Remembrancer of Legal Affairs.

U. R. to R.D. No.1659, dated 27th January 1951.

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19/5.

Office of the R.L.A.

It appears that the Court has an inherent power to direct refund of court-fees I.L.R.(1943) Bom. 25. The Government may therefore leave it to the court to decide.

Sd/-
28/2.

Remembrancer of Legal Affairs.

U.R. to R.D. No.3601, dated the 28th February 1951.

A-Cs.

M.V.V.
19/5.

Court Fee
Baroda Agricultural Debtors Relief Act.
Refund of - paid under,

GOVERNMENT OF BOMBAY.
Revenue Department.
Circular No.9071/49.

Bombay Castle, 28th April 1951.

CIRCULAR OF GOVERNMENT.

It has been represented to Government that there are some cases in which parties had paid Court fees on application made to the Court under the Baroda Agriculatural Debtors Relief Act at a rate higher than that prescribed under the Bombay Agricultural Debtors Relief Act, 1947 ; that while they could secure a refund of the Court fees paid under the Baroda Act, no such provision exists in the Bombay Act; and that, consequently, parties from the former Baroda State are now at a disadvantage. It is prayed that in the circumstances, the officers concerned should be instructed to refund Court fees admissible under the Barod Act to parties who had filed suits under that Act and paid higher court fees during the ex. Baroda State regime.

2. It appears that the Court has an inherent power to direct refund of court fees Indian Law Reporter (1943) Bom.25 It is, therefore, not necessary for Government to issue any general orders regarding refund of court fees as prayed for. The officers concerned are, however, instructed to leave it to the Court to decide, whether any refund of the type prayed for should or should not be granted in individual cases and to advise the parties concerned to approach the court in case they claim a refund of the court fees under the Baroda Act.

By order of the Governor of Bombay,

D.S.BAKHLE,
Secretary to Government.

To,

The Inspector General of Registration, Poona, Etc.

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L.D.R.I.No.6573 dated 3/4/51.

Submitted with reference to the note of the R.D. at p.11 ante.

For the full facts of the case, please see the reply No. 2004/P dated 21.2.51 of the Supdt. of Stamps at pp. 7-8 ante.

The facts may be briefly stated as under :-

Shri Ebrahim Abdulla put in a petition No. 471 of 1945 for the grant of letters of Administration in the matter of the Estate of his deceased wife, Hadayatbai. In the Schedule attached to the petition amongst one of the properties namely "land" appears to have been under valued. The Collector of Bombay was given a notice to ascertain under section 19-H of the Court fees Act, whether the landed property described in the Schedule has been undervalued. The Collr. of Bom. eventually estimated an undervaluation of Rs.2000/- in respect of the landed property in the matter of the Estate of the deceased, Hidayatbai W/O Ebrahim Abdulla. The petitioner Shri Ebrahim Abdulla was therefore called upon, to pay the additional administration duty of Rs.100/- due on the undervaluation. The petitioner in his letter dated 22.12.1947 slip marked 'A' at p.67 in the linked file below though protesting in a lukewarm manner, agreed to pay the additional administration duty by a monthly instalment of Rs.20/- Two monthly instalments of Rs.20/- each under his letters dated 20.1.1948 and 20.2.1948 at p.75 and p.77 respectively slip marked 'B' and 'C' were actually received. Thereafter the petitioner defaulted 3 remaining monthly instalments. In his letter dated 28.6.48 slip marked 'D', he pleaded his inability in the matter and promised to continue paying the defaulted instalments from 20.7.1948 and onwards, and requested that no proceedings might be taken against him through the Collector. Inspite of this last promise of

P.T.O.

his, Shri Ebrahim Abdulla has not cared to pay the balance of Rs.60/- of the Additional Administration duty nor has he taken the trouble to acknowledge the reminders issued from time to time. The petitioner was ultimately summoned to attend the office of the Collr. but he has not attended. The Superintendent of Stamps says at p.6 ante that there is no provision under sect. 19-H of the Court Fees Act, for recovery of the additional duty, when the petitioner accepts the valuation made by the Collector but subsequently fails to pay the amount of deficit duty due on the undervaluation. It is further opined that as soon as the undervaluation is accepted by the petitioner, the proceedings for an enquiry under sect. 19-H(4) do not become applicable to this case, and it was not worthwhile to file a regular suit for the recovery of this small amount of Rs.60/-. The question referred to the R.L.A. is whether section 19-H(4) of the Court fees Act would not apply, if the petitioner agrees to pay the Additional Administration duty, thus indirectly accepting the undervaluation pointed out by the Collr. but after paying a part of the additional duty, defaults to make the balance of the additional duty, and the balance of the additional duty will not be recoverable under sect.19(j) (1) of the Act.

Under sect. 19-H(3) the Collr. after enquiry, may require the petitioner to amend the valuation. Section 19-H (4) says that <u>if the petitioner does not amend the valuation as to the satisfaction of the Coll.</u> the Collr. may move the Court before which the application for probate or letters of administration was made, to hold an enquiry into the true value of the property.

An excess fee cannot be recovered under sect.19-J(1) of the Act by a Summary process as an arrear of landrevenue by the Collector, unless an enquiry has been held by a Probate Court as provided under sub-sect.(6) of section 19-H of the Act. It appears that unless .....

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Legal Department.

The proposal to move the Court under section 19-H(4) of the Court-fees Act would be legally feasible provided the limitation period under the proviso to that sub-section (4) has not yet expired. However, as advised by the Advocate General in a similar case at - p. 9 ante, considering the smallness of the amount of court-fee involved in the present case it would not be worth-while to move the Court.

Sd/-

Additional Secretary to Government.

U.R. to R.D. No.8193, dated the 24th May 1951.

A-Cn.
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Write off
Estate of Hidayalbai(deceased)
W/O Ebrahim Abdulla -
-balance of probate duty
for valuation of ..

GOVERNMENT OF BOMBAY,
Revenue Department,
Resolution No. 8240/49,
Bombay Castle, 21st June 1951.

Letter from the Collector of Bombay No.S.T.R.S.R.I./1532 dated the 14th December 1950.

" In this case the valuation of the landed property of the abovenamed deceased was under-valued by this office to the extent of Rs.2,000/- and the under-valuation so arrived at was communicated to the Assistant Superintendent of Stamps for further action.

The petitioner, Shri Ebrahim Abdulla has, however, made a part payment of Rs.40/- only towards the additional Stamp Duty of Rs.100/- and the balance of Rs.60/- is still due from him.

Several letters were sent to him by the Stamp Office but he failed to pay the balance of Rs.60/-. The case was sent back to the Collector by the Assistant Superintendent of Stamps, on which this office summoned the petitioner to attend this office and to pay the balance. In spite of this no further payment has so far been made.

In view of the above facts a reference was made to the Government Solicitors for suggesting proper procedure to effect recovery, but they have expressed their view that the amount being trivial it would be worthwhile to consider whether a suit should be filed to recover the amount considering the time that will be taken for the disposal of the suit and the inconvenience caused in prosecuting the same. In agreeing with their above suggestion, I consider that it would not be worthwhile to file a civil suit for the recovery of the amount and I request that Govt. be moved to write off the balance amount of Rs.60/- in view of the facts mentioned above."

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Unofficial reference from the Superintendent of Stamps, Bombay, No.545/P, dated the 17th January 1951.

Re: Estate of Hidayatbai W/O Ebrahim Abdulla deceased.

Submitted to Government in the Revenue Department, Bombay.

The Collector of Bombay reported an undervaluation of Rs.2,000/- in respect of the landed property belonging to the estate of the abovenamed deceased. The petitioner was, therefore, called upon to pay additional Administration duty of Rs.100/- due on the undervaluation. The petitioner accepted the undervaluation and a sum of Rs.40/- was recovered from him. The petitioner, however, failed to pay the balance of Rs.60/- on account of addtional duty. The Collector was, therefore, requested to take step for the recovery of the deficit duty due by the petitioner. The matter could not be referred to the High Court, Bombay to hold an enquiry under section 19AA (4) of the Court Fees Act as the petitioner had accepted the undervaluation. The otherwise was to file a civil suit against the petitioner for the recovery of the balance. Messrs. Little and Company Solicitors to Government of Bombay have informed the Collector that it would not be worthwhile to file a suit as the amount of duty involved is small. There is no provision in the Court Fees Act to write off or remit the amount on account of additional Probate duty however small it may be. Sanction of Government in exercise of their inherent powers will be necessary if Government decide to do so.

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Contd.....

Unofficial reference from the Superintendent of Stamps Bombay, No.2004/P, dated the 21st February 1951.

Resubmitted to Government in the Revenue Department,"L" Branch Bombay,

"Reference : Estate of Hidayatbai W/O Ebrahim Abdulla ..... deceased.

The undervaluation of Rs.2,000/- was repeated by the Collector of Bombay and it was communicated to Messrs Manubhai and Company, attorneys for the petitioners, for taking the steps to amend the schedule of assets.

Several letters were sent to the atterneys for paying the amount of additional duty of Rs.100/- due on the undervaluation. The attorneys stated in their letter dated 31st October 1947 that they had sent about a dozen letters to the petitioner and they furnished the address of the petitioner as their client did not see them As no further communication was received from the atterneys or the petitioner a notice was sent to Shri Ebranhim Abdulla who is the petitioner in the matter for complying with the requirements of this office within a fortnight. A reply dated 22nd December 1947 was received from the petitioner in which he requested to be allowed to pay the amount of additional duty in installments of Rs.20/- each. His request was granted and two instalments of Rs.20/- each, were received on 20th January 1948 and 20th February 1948 respectively. As the further instalments were not received the petitioner was reminded and he wrote in his letter dated 28th June 1948 that he undertook to pay the balance from the month of July 1948. As no payment was received the petitioner was reminded from time to time . Ultimately the Collector of Bombay was requested in this office letter dated 2nd September 1949 to call upon the petitioner for the recovery of the balance due by the petitioner. It however, appears from the letter dated 4th December 1950.

addressed to the Secretary to Government, Revenue Department Bombay that the petitioner was summoned to attend the office of the Collector and pay the balance. In spite of this no

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further payment has so far been made.

The amount of additional duty involved in this case is Rs.100/- and if the petitioner disputed the valuation made by the Collector of Bombay it would have been necessary to hold an enquiry under Section 19-H(4) of the Court Fees Act, by the High Court into the true value of the property. The amount of additional duty involved is small and the Advocate General, Bombay has expressed his opinion dated 3rd December 1945 (copy enclosed) in the matter of the estate of Bai Navivahu wd/o Thakur Vahuji Kandas, that it would not be worthwhile to refer the matter to the Court as the cost of the proceedings would not be proportionate with the amount of duty involved (Rs.136.0.0) In view of this opinion the request of the petitioner was allowed for paying the amount in instalments. There is no provision under Section 19-H of the Court Fees Act for the recovery of additional duty when the petitioner accepts the valuation made by the Collector but subsequently fails to pay the amount of deficit duty due on the undervaluation It is submitted that as soon as the undervaluation is accepted by the petitioner the proceedings for an enquiry under Section 19-H(4) do not become applicable to this case. It is therefore necessary that some sutiable amendment may be made in Section 19-J(1) of the Act authorising the Collector to recover the amount of additional duty as an arrear of land revenue when the petitioners accept the undervaluation but fail to pay the amount, after due notice.

Typed as an accompaniment

The case papers are sent herewith as desired.*

Memorandum from the Remembrancer of Legal Affairs, No. 9193, dated 24th May 1951.

* The proposal to move the Court under Section 19-H(4) of the Court-fees Act would be legally feasible provided the limitation period under the provise to that sub-section (4) has not yet expired However, as adivsed by the Advocate General in a similar case at p.9 note considering ———

the.....

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the smallness of the amount of court-fee involved in the present case it would not be worth-while to move the Court."

RESOLUTION : Government is pleased to accept the advice given by the Remembrancer of Legal Affairs and to direct that the amount of Rs.60/- on account of balance of probate duty which could not be recovered from Shri Ibrahim Abdulla of Bombay should be written off.

By order of the Governor of Bombay,

D.S. BAKHLE,
Secretary to Government.

Government Resolution, No.6240/49, Revenue Department, dated 21st June 1951.

To,

The Collector of Bombay, etc.

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21/5.

Accompaniment to the Government Resolution No. 8240/49 Revenue Department, dated 21st June 1951,

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Opinion.

Bombay 29th November 1945.

Messrs. Little and Company.

Re : Petition under sub-section 4 of Section 19-H of the Court-fee Act XI of 1899.

In the matter of the petition for Probate of the last will and Testament of Bai Navivahu widow of Thakur Vahuji Ramdas deceased.

Goswami Shri Krishna Jivaji
Petitioner
The Collector of Nasik Nasik
Petitioner.

Vs.

Goswami Shri Krishna Jivaji
Opponent.

I have seen the papers in the matter of the — Collector of Nasik against Goswami Shri Krishna Jivanji.

The additional probate duty which will have to be paid by the petitioner amounts to Rs.136/- I do not think it is worthwhile having regard to the smallness of the amount to institute proceedings under the Court fees Act. The costs of incidental to the proceedings which Government will incur will themselves be considerably in excess of the amount. I suggest that this is not a case where a petition should be filed there being no point of principle involved wither as to the application of any rule of law or the method of valuation.

I am now retaining the papers pending further instructions.

Sd/- C.K Dephetary
3.12.45.

No. of 1951.

Copy forwarded for information and guidance to:-

A-Cs.
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R.I.No.2374S/17.11.51.

Office of the R.L.A.

The question raised for the R.L.A's consideration is whether any court fee is payable on the objection petitions filed under section 19(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

Under section 19(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, any person likely to be affected by the draft scheme of consolidation shall within thirty days of the date of publication thereof communicate in writing to the Consolidation Officer any objections relating to the scheme. Under section 6 of the Court-fees Act, 1870, except in the courts hereinbefore-before mentioned, no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any court of justice or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedule as the proper fee for such document. A statement of objections filed under section 19(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act does not fall either under Schedule I or under Schedule II to the Court-fees Act and consequently such statement would not be liable to any court-fee. The fact that an application or petition to a Collector or other officer making a settlement of land revenue, or to a Board of Revenue or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interestes therein if presented previous to the final confirmation of such settlement has been specially exempted from payment of any court fee under section 19(ix) of the Court-fees Act would be no valid ground for holding that a statement of objections under section 19(1) of the Bombay

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Prevention of Fragmentation and Consolidation of Holdings Act would be impliedly liable unless exempted to a court-fee stamp. Further also, the fact that under section 24 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act a certificate of transfer has been specifically exempted from stamp or registration fee would not make a statement of objections under section 19(1) liable to the court fees, for a certificate of transfer would ordinarily be liable to stamp duty and registration fee as it involves a transfer of interest in the property. The other questions raised would not survive.

Sd/- J.R.Dhurandhar,
17/12.
Remembrancer of Legal Affairs.

U.R. to R.D. No.20111, dated the 17th December 1951.

A-Cs.
M.V.V.
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